



Members
James Paul Geary
Orton A. Jones
David L. White

**WEST VIRGINIA EDUCATION
EMPLOYEES GRIEVANCE BOARD**

ARCH A. MOORE, JR.
Governor

Offices
240 Capitol Street
Suite 508
Charleston, WV 25301
Telephone 348-3361

BENNY MILLS

v.

DOCKET NO. 55-86-292-4

WYOMING COUNTY BOARD OF EDUCATION

DECISION

This grievance comes before the West Virginia Education Employees Grievance Board on appeal from an informal hearing at level two and a waiver by the respondent board at level three.¹ The grievance was assigned to John M. Richardson, Hearing Examiner, and a level four hearing was held on November 13, 1986. It was understood by the parties that any decision on this matter would be delayed until a companion grievance arising out of the same facts and circumstances was also heard. That grievance was styled Kitty S. Francis and John M. Griffin v. Wyoming County Board of Education, Docket No. 55-86-304-4, and was submitted for decision after the

¹ While the record is not complete, it appears that the parties held an unrecorded hearing/conference with the Interim Superintendent, John Nolley. The Interim Superintendent then filed a written response indicating he could not resolve the grievance at level two. Apparently, board member/president, Robert E. Lookabill, was present at level two and agreed to present the grievants' request to waive the level three hearing. This was apparently accomplished at the respondent board's meeting on October 6, 1986, at which time the grievance was waived to level four. Due to the publicity and implications surrounding the change in job requirements which were alleged
(footnote cont.)

level four hearing and receipt of proposed findings of fact and conclusions of law on December 23, 1986.

In this grievance, the grievant, Benny Mills, complains that the respondent board failed to follow its own policy (Wyoming County Board of Education, #3035(6)), by not interviewing the grievant; violated county policy #3035(1), by changing the previous job description so as to lessen the requirements; and failed to fill the posted position on the basis of qualifications.

The respondent admits that it did not interview the grievant but denies this was in violation of county policy #3035(6). Further, the respondent contends that the job requirements were changed by the board at its meeting on August 4, 1986 and those requirements as changed, permitted more employees to apply and exceeded the State Board of Education standards. Finally, the respondent asserts that it filled the position with the most qualified and most senior applicant.

The evidence presented reveals that the grievant, Benny Mills, was employed as a Special Education teacher and assigned to Stephenson Grade School. He had accumulated four years of seniority and had been verbally approved for his Masters degree. He had a

(footnote cont.)

to have occurred in favor of board member McGraw's "in-law", Rita Isom, this Hearing Examiner decided to hear and resolve the matter at level four rather than remanding the grievance to level two for an evidentiary hearing, pursuant to WV Code §18-29-4(b).

Notwithstanding, this Hearing Examiner recognizes that this procedure is not the preferred manner in which most grievances should be handled.

BD (Blind/Deaf) certificate endorsement and verbal approval for MI and LD endorsements.²

Due to the resignation on August 1, 1986 of Barbara Boyd, a vacancy in the position of Special Education Diagnostic Specialist occurred. On August 4, 1986, the respondent board met and upon motion by board member Warren McGraw, which passed unanimously, the job requirements of the Special Education Diagnostic Specialist were changed so as to require only two exceptionality endorsements rather than the previous three endorsements.³ The respondent received seven applications in response to the job vacancy notice and the successful applicant was Rita Isom, who is commonly referred to as an "in-law" of board member Warren McGraw. Ms. Isom held a Masters degree plus fifteen hours (salary classification) and had eight years seniority with two endorsements. She was the applicant with the most seniority.

²The grievant had applied for his Masters degree and certificate endorsements of MI (Mental Impairment) and LD (Learning Disabilities) which had been verbally approved by the appropriate authorities; however, the paper work had not been finalized at the time of grievant's application for this position. The formal paperwork was subsequently completed in conformance with the verbal approval.

³The record was unclear as to the minimum requirements of the West Virginia Board of Education, but it was uncontested that Wyoming County Board of Education's requirements as established during its August 4, 1986 meeting, exceeded the minimum requirements. It is noted that Grievant's Exhibits #1 and #3 (job vacancy notice and job description) show that the recent job vacancy (Gr. Ex. #1) required a valid West Virginia teaching certificate with any two endorsements while the previous job description (Gr. Ex. #3) required a valid West Virginia teaching certificate with three specific endorsements of MR (Mental Retardation), LD (Learning Disabilities) and BD (Behavioral Disorders).

The grievant contends that the selection of board member McGraw's in-law was not coincidental but nevertheless he asserts he was more qualified because he had three endorsements.⁴

In the recent case of Dillon v. Wyoming County Board of Education, 351 S.E.2d 58 (W.Va. 1986), the West Virginia Supreme Court of Appeals dealt with a similar factual situation and there, the Court stated that the entire process suggested a manipulation of the hiring process in order to create a job for the Superintendent's sister-in-law. In this grievance, there was not doubt that John Nolley, Interim Superintendent, was not creating a position and he was familiar with the credentials of all the applicants. He testified unequivocally that he believed Rita Isom was the most qualified and had the most seniority. He based his testimony on his personal knowledge, stating that he had worked with Rita Isom and knew she was uniquely qualified based upon her experience and her own individual handicap.

In the Dillon case, supra, the Court held in syllabus points 1, 2 and 3 that:

1. Under W. Va. Code, 18A-4-8b(a) (1983), decisions of a county board of education affecting teacher promotions and the filling of vacant teaching positions must be based primarily upon the applicants' qualifications for the job, with seniority having a bearing on the selection process when the applicants have otherwise equivalent qualifications or where the difference in qualification criteris are insufficient to form the basis for an informed and rational decision.

⁴While the grievant suggests that the action by board member McGraw was motivated by his family relationship with Rita Isom, no proof was forthcoming except the change in job qualifications which, in effect, increased the number of people who met the basic qualifications from one or two to seven.

2. County boards of education are bound by procedures they properly establish to conduct their affairs.
3. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious.⁵

The grievant offered no proof that the respondent violated its policy #3035(1), which states:

At any time there is a vacancy for any job within the Wyoming County School System, the following procedure will be utilized:

- (1) A memorandum with the job vacancy, job description, and qualifications needed will be posted in every Board facility in Wyoming County in a designated area.

In fact, all of the evidence indicates that the required memorandum was posted.

In the remaining allegation, the grievant alleges that the respondent violated its policy #3035(6), which provides:

At any time there is a vacancy for any job within the Wyoming County School System, the following procedure will be utilized:

- (6) If the vacancy exists within another facility (Example: Transportation Department) the person responsible will complete the interview process.

While the grievant complains that he was not interviewed in violation of respondent's policy #3035(6), it is apparent that he was, as a practical matter, a part of the Department of Special Services

⁵ Syllabus point three of the Dillon case, supra, effectively silences the grievant's complaint that the respondent acted arbitrarily in as much as it was uncontested that the respondent's requirements exceeded the minimum.

which included Special Education. Therefore, under the policy "example" he would not necessarily be entitled to an interview. The record is clear that each of the applicants and their credentials were known to the Director of Special Services and Interim Superintendent John Nolley, and that they considered each of the applicants.

In addition to the foregoing, the following findings of fact and conclusions of law are incorporated herein.

FINDINGS OF FACT

1. The grievant, Benny Mills, is a Special Education teacher employed by the Wyoming County Board of Education and assigned to Stephenson Grade School.

2. The grievant, at the time he applied for the vacancy of Special Education Diagnostic Specialist, had received verbal confirmation of his achieving a Masters degree and two additional endorsements for a total of three endorsements.

3. The grievant had four years of experience.

4. The successful applicant, Rita Isom, had a Masters degree plus fifteen hours and two endorsements; and she also had eight years of teaching experience, five years of which were in Special Education.

5. Rita Isom was the most qualified among all of the applicants and was the applicant with the most seniority.

6. The grievant was not interviewed but was considered equally among all of the applicants.

7. Rita Isom was believed to be the sister-in-law of board member Warren McGraw. There was no direct evidence that this

family relationship was a factor in her selection for the vacant position.

8. The respondent did not violate its policy #3035(6) or #3035(1).

9. The respondent changed the job qualifications for the position of Special Education Diagnostic Specialist at its August 4, 1986 meeting.

10. The change in qualifications was posted in the position announcement on August 5, 1986, which increased the number of persons in the county school system who were potentially qualified.

11. The change in requirements approved by the respondent board reduced the number of exceptionality endorsements from three to two.

12. The respondent board's job qualifications exceeded those of the West Virginia Board of Education.

CONCLUSIONS OF LAW

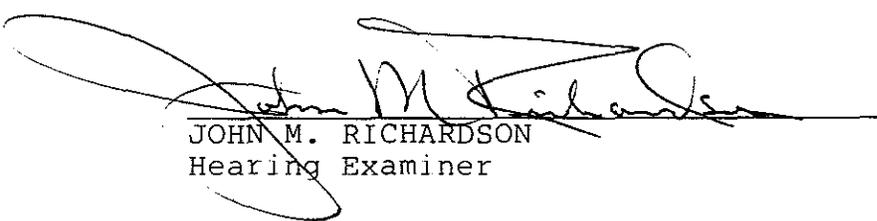
1. Under WV Code §18A-4-8b(a) (1983), decisions of a county board of education affecting teacher promotions and the filling of vacant teaching positions must be based primarily upon the applicants' qualifications for the job, with seniority having a bearing on the selection process when the applicants have otherwise equivalent qualifications or where the difference in qualification criteria are insufficient to form the basis for an informed and rational decision. Dillon v. Wyoming County Board of Education, 351S.E.2d 58 (W.Va. 1986).

2. County boards of education have substantial discretion in matters relating to the hiring, assignment, transfer, and promotion of school personnel. Nevertheless, this discretion must be exercised reasonably, in the best interests of the schools, and in a manner which is not arbitrary and capricious. Dillon v. Board of Education of the County of Wyoming, 351 S.E.2d 58 (W.Va. 1986).

3. The respondent board did not act arbitrarily or capriciously in selecting Rita Isom over all of the other applicants seeking to fill the position of Special Education Diagnostic Specialist.

For all of the foregoing reasons, the grievance is denied.

Either party may appeal this decision to the Circuit Court of Wyoming County or the Circuit Court of Kanawha County and such appeal must be filed within thirty (30) days of receipt of this decision. (WV Code §18-29-7) Please advise this office of your intent to do so in order that the record can be prepared and transmitted to the Court.



JOHN M. RICHARDSON
Hearing Examiner

DATED: Feb. 18, 1987